REMARKS

Status of the Claims

Claims 1- 36 are now pending in the present application.

Claims Rejected Under 35 U.S.C. § 102(e)

The Examiner has rejected Claims 1, 2, 4-8, 10, 11, 14-21, 22-27, 29, 30, 33, 34, and 36 as being anticipated by U.S. Patent No. 6,128,279 (O'Neil et al., hereinafter referred to as "O'Neil"). The Examiner asserts that O'Neil describes each element of applicants' claimed invention. Applicants respectfully disagree for the reasons noted below.

In the interest of reducing the complexity of the issues for the Examiner to consider in this response, the following discussion focuses on independent Claims 1, 19, 24, and 36. The patentability of each dependent claim is not necessarily separately addressed in detail. However, applicants' decision not to discuss the differences between the cited art and each dependent claim should not be considered as an admission that applicants concur with the Examiner's conclusion that these dependent claims are not patentable over the cited references. Similarly, applicants' decision not to discuss differences between the prior art and every claim element, or every comment made by the Examiner, should not be considered as an admission that applicants concur with the Examiner's interpretation and assertions regarding those claims. Indeed, applicants believe that all of the dependent claims patentably distinguish over the references cited. However, a specific traverse of the rejection of each dependent claim is not required, since dependent claims are patentable for at least the same reasons as the independent claims from which the dependent claims ultimately depend.

Independent Claim 1

With regard to independent Claim 1, significant differences exist relative to the disclosure of O'Neil, because in this cited reference, there is no teaching or suggestion that clients in either a first group or a second group continue to receive services *only* from first and second resources, respectively, for as long as those services are provided by the resources. However, with regard to step(b) of applicants' Claim 1, which recites "directing a plurality of new client requests for service by the cluster to the intake to form a first group of clients, wherein each client in the first group continues to receive services only from the first resource for as long as those services are provided," the Examiner asserts that O'Neil discloses the equivalent of this step in the Abstract and in column 4, lines 1-6, since content based routing implies the direction of client requests (Office Action, page 2).

Assuming *arguendo*, the Examiner means that clients who submit content based requests correspond to a first group of clients and that these requests that are content based are new client requests for service, which are directed by the cluster to the intake, there is still no suggestion or teaching that each client in the first group *continues to receive services only from the first resource for as long as those services are provided.* Instead, O'Neil teaches load balancing wherein a service requested by client can be switched to a different server that will process the request, in order to balance the load on a plurality of servers.

Similarly, with regard to step(e) of applicants' Claim 1, which recites "directing successive new client requests for services by the cluster to the new intake to form a second group of clients, wherein each client in the second group continues to receive services only from the second resource for as long as those services are provided," the Examiner asserts that O'Neil discloses the equivalent of this step, since the routing takes place only among servers that are online, which constitutes the use of a sole second resource (Office Action, page 3). Nevertheless, there is still no suggestion or teaching in O'Neil that each client in this second group *continues to receive services only from the second resource for as long as those services are provided.*

Accordingly, the rejection of independent Claim 1 under 35 U.S.C. § 102(e) over O'Neil should be withdrawn based on the reasons noted above. Because dependent claims are considered to include all of the elements of the independent claims from which the dependent claims ultimately depend and because O'Neil does not disclose or suggest all of the elements of independent Claim 1, the rejection of dependent Claims 2, 4-8, 10, 11, and 14-18 under 35 U.S.C. § 102(e) over O'Neil should also be withdrawn, for at least the same reasons as the rejection of Claim 1.

Independent Claim 19

Independent Claim 19 is directed to a system for distributing a processing load in a cluster. Clearly, for the same reasons already noted above in regard to independent Claim 1, this claim also distinguishes over O'Neil, because O'Neil does not teach or suggest either a first group or second group of clients that continue to receive services only from a first resource or a second resource, respectively, for as long as those services are provided by the resources. Accordingly, the rejection of independent Claim 19 under 35 U.S.C. § 102(e) over O'Neil should be withdrawn based on the reasons given above. Because dependent claims are considered to include all of the elements of the independent claims from which the dependent claims ultimately depend and because O'Neil does not

teach or suggest all of the elements of independent Claim 19, the rejection of dependent Claims 20-23, under 35 U.S.C. § 102(e) over O'Neil should also be withdrawn, for at least the same reasons as the rejection of Claim 19.

Independent Claim 24

With regard to the fifth step of applicants' Claim 24, which recites "directing a plurality of new client requests for the first type of service to the new intake to form a second group of clients, wherein each client in the second group continues to receive services only from the second instance for as long as those services are provided," the Examiner asserts that it is implied by the cited art that the second server solely offers services to the second group of clients in the event that the first server is unable to do so and cites lines 49-50 of column 8, which refers to the invention of O'Neil routing the requests to another server that can handle requests for the URI (Office Action, page 9). However, O'Neil fails to expressly teach or even suggest that clients in the group requesting the URI will continue to receive services *only* from the resource devoted for respond to the request for the URI. Accordingly, the rejection of independent Claim 24 under 35 U.S.C. § 102(e) over O'Neil should be withdrawn based on the reasons given above. Because dependent claims are considered to include all of the elements of the independent claims from which the dependent claims ultimately depend and because O'Neil does not disclose or suggest all of the elements of independent Claim 24, the rejection of dependent Claims 25-27, 29, 30, 33, and 34 under 35 U.S.C. § 102(e) over O'Neil should also be withdrawn, for at least the same reasons as the rejection of Claim 24.

Independent Claim 36

In step (c) of independent Claim 36, applicants recite "means for designating a first resource as an intake so that the first resource accepts requests from new clients for a service, and in response thereto, forms a first group of clients that continue to receive services only from the first resource for as long as those services are provided." The Examiner asserts that O'Neil teaches the equivalent of this step in the Abstract, and because content based routing implies the direction of client requests. However, as noted above, O'Neil does not teach or suggest an equivalent of the recited means, because in O'Neil, there is no teaching or suggestion that a first group of clients will continue to receive services only from a first resource for as long as those services are provided. Similarly, in step (e) of independent Claim 36, applicants recite "means for designating a second resource as the new intake so that the second resource begins to accept requests from new clients for the service, and in

response thereto, forms a second group of clients that continue to receive services only from the second resource for as long as those services are provided." The Examiner asserts that lines 9-21 of column 8 in the reference teach this step. Although this citation refers to routing network requests based on both a content of the request and the loads being handled by the various servers, O'Neil expressly lacks any suggestion that a group of clients continues to receive services only from the second resource. Accordingly, the rejection of independent Claim 36 under 35 U.S.C. § 102(e) over O'Neil should be withdrawn based on the reasons given above.

Claims Rejected under 35 U.S.C. § 103(a)

Claims 12, 13, 31, and 32 are rejected under 35 U.S.C. § 103(a) as being unpatentable over O'Neil. The Examiner asserts that it would have been obvious to one of ordinary skill in the art to modify O'Neil to include the ability for resources to announce intake designations of other resources, because this ability is a simple convenience and constitutes a design choice rather than a patentable distinction. However, the Examiner has failed to cite any art that expressly teaches or suggests the details of these claims and the Examiner cannot simply assert that these details are the result of design choices. To justify his rejection of these claims as unpatentable, art must be cited that suggests the content of the claims, but the Examiner has failed to do so.

Further, Claims 12-13 depend from independent Claim 1, which is patentable for the reasons discussed above, while Claims 31 and 32 depend from independent Claim 24, which is also patentable for the reasons discussed above. Because dependent claims are considered to include all of the elements of the independent claims from which the dependent claims depend, dependent Claims 12-13 and Claims 31 and 32 are patentable for at least the same reasons discussed above with regard to independent Claim 1. Accordingly, the rejection of dependent Claims 12-13 and Claims 31 and 32 under 35 U.S.C. § 103(a) over O'Neil should be withdrawn.

Claims 3, 9, 28, and 35 are rejected under 35 U.S.C. § 103(a) as being unpatentable over O'Neil in view of U.S. Patent No. 5,031,089 (Liu et al., hereinafter referred to as "Liu"). The Examiner asserts that it would have been obvious to one of ordinary skill in the art to combine the embodiments of O'Neil and Liu's inventions, because they are from the same field of endeavor – namely load balancing servers. However, Claims 3 and 9 depend from independent Claim 1, which is patentable for the reasons discussed above. Claims 28 and 35 depend from independent Claim 24, which is patentable for the reasons discussed above. Because dependent claims are considered to include all of the elements of

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the independent claims from which the dependent claims depend, dependent Claims 3 and 9 and Claims 28 and 35 are patentable for at least the same reasons discussed above with regard to independent Claim 1 and 24, respectively. Accordingly, the rejection of dependent Claims 3 and 9 and Claims 28 and 35 under 35 U.S.C. § 103(a) over O'Neil should be withdrawn.

In view of the Remarks set forth above, it will be apparent that the claims in this application define a novel and non-obvious invention, and that the application is in condition for allowance and should be passed to issue without further delay. Should any further questions remain, the Examiner is invited to telephone applicants' attorney at the number listed below.

Respectfully submitted,

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RMA/SKM:lrg

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